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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK DANIELS,

Defendant and Appellant.

B209491

(Los Angeles County  
Super. Ct. No. SA057290)

APPEAL from an order of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Derrick Daniels appeals the trial court's order directing him to pay \$4,860.13 to the Victims' Compensation and Government Claims Board. We affirm the trial court's order.

### **FACTUAL AND PROCEDURAL HISTORY**

At proceedings held on February 25, 2008, the trial court indicated that the People had received information indicating that, as a result of Daniels's case, the Victim's Restitution Fund had paid \$4,860.13 to the victims of Daniels's crime. As Daniels was already serving a term in state prison, and he wished to be present at the restitution hearing, the matter was continued to April 28, 2008.

Daniels failed to appear at the April 28, 2008 hearing and the matter was again continued. On July 9, 2008, the trial court indicated the proceedings were being held "because [the] People had submitted a request for restitution order pursuant to monies paid out by the Victim Restitution Fund in the amount of \$4,860.13." Defense counsel objected to the award of any restitution. She argued that Daniels had been sentenced on February 5, 2008 and that no direct restitution had been ordered at that time. Instead, Daniels had been ordered to pay a \$1,000 restitution fine. Counsel asserted that the court's ability to recall a sentence, which is what counsel believed the trial court was doing, expired after 120 days, or in the beginning of June. Thus, the court lacked jurisdiction to order any additional restitution. Counsel continued, "What they're asking you to do is indemnify the Victims' Compensation and Government Claims Board by using this court's power to order Mr. Daniels to pay the Compensation Claims Board back money they decided to pay to the victim. [¶] We don't know the standard that was used. I see the bills. I don't know what was paid really, what wasn't. I see some of it is for the fire department . . . . So[,] I would object to the entirety of the restitution, both . . . procedurally and substantively."

The trial court responded, indicating that, to the extent the victim had been compensated, under Penal Code section 1202.4, subdivision (k)(3)(E) and (4), "the amount paid by the restitution fund [was] a presumptively valid amount . . . which is

rebuttable by evidence that [the defendant] can present.”<sup>1</sup> The court continued, “Also, we could have done this by two-way hearing to impose or amend a restitution order when someone is incarcerated in state prison. So it does seem to contemplate that the restitution order can be amended, the statute seems to contemplate that. [¶] At the time, we didn’t know what the restitution amount was, so we set it as pursuant to civil judgment. And this in effect is the civil judgment now. [¶] So I am going to order restitution to the Victim Restitution Fund in the amount of \$4,860.13.”

Daniels filed a notice of appeal from the trial court’s order on July 14, 2008.

This court appointed counsel to represent Daniels on appeal on September 22, 2008.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed November 17, 2008, the clerk of this court advised Daniels to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied Daniels’s counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

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<sup>1</sup> Penal Code section 1202.4 provides in relevant part: “(k) For purposes of this section, ‘victim’ shall include all of the following: [¶] . . . [¶] (3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions: [¶] . . . [¶] (E) Is the primary caretaker of a minor victim. [¶] (4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.”

**DISPOSITION**

The trial court's order directing Daniels to pay \$4,860.13 to the Victims' Compensation and Government Claims Board is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.